IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 5588 of 2007(M)

OS.930/2002 of ADDL.MUNSIFF COURT, KOLLAM
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PETITIONER:

S.SREEKUMAR, S/O. SREEDHARAN NAIR,
"SREERANGAM" VEEDU, VALATHUNGAL CHERRY,
ERAVIPURAM, KOLLAM.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:
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1. SREEDEVI, W/O. HARIDAS,
"SREEHARI", AKKOLIL CHERRY, VALATHUNGAL,
ERAVIPURAM, KOLLAM.

2. HARIDAS,
"SREEHARI", AKKOLIL CHERRY, VALATHUNGAL,
ERAVIPURAM, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.5588/2007 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.930/2002 ON THE FILES OF THE MUNSIFF'S COURT, KOLLAM.**

EXT.P2: **COPY OF THE JUDGMENT DTD. 28/09/2006 IN AS.NO.149/2005 ON THE FILES OF THE DISTRICT COURT, KOLLAM.**

EXT.P3: **COPY OF THE AGREEMENT DTD. 16/08/2002 EXECUTED BY THE DEFENDANTS TO THE PLAINTIFF.**

EXT.P4: **COPY OF THE ORDER DTD. 20/01/2007 IN OS.930/2002 ON THE FILES OF THE MUNSIFF'S COURT, KOLLAM.**

EXT.P5: **COPY OF THE PETITION IN I.A.550/2007 IN OS.930/2002.**

EXT.P6: **COPY OF THE ORDER DTD. 24/01/2007 IN I.A.550/07 IN O.S.930/2002 ON THE FILES OF THE MUNSIFF'S COURT, KOLLAM.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.5588 OF 2007

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Dated this the 11th day of September 2007

JUDGMENT

This writ petition is filed to set aside Exts.P4 and P6 orders passed by the Addl. Munsiff, Kollam. The learned Munsiff found that the document relied on by the plaintiff is a deed of acknowledgment of liability and the stamp duty paid is not proper and the document is impounded under Section 33 of the Stamp Act. When an application for review was filed, it was dismissed on the ground that impounding has been done as per the direction of the appellate court. Ext.P3 is the document which requires consideration. The nomenclature of the document is shown as .....There is also a recital in the document that amounts can be recovered by proceeding against the property described in the document. Learned counsel for the petitioner submits that if it is only a document of acknowledgment of liability, it is properly stamped. There are two aspects to be considered in the document and the court has to arrive at a decision what the documents stand for, what is the intention of the party, whether stamp duty has to be

paid, if so, under what provision and thereafter time to be given to the party to pay stamp duty and penalty and only on refusal to do so, it has to be impounded as provided under the Stamp Act. So a decision regarding the nomenclature, liability, etc. are to be decided by the court and only thereafter it can proceed under Section 33 of the said Act for impounding, that too, after giving an opportunity to the party to pay stamp duty and penalty. Unfortunately the learned Munsiff has not considered the matter in the correct perspective and therefore the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration and both the parties are permitted to advance the arguments in support of their respective contentions and the matter be disposed of in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-